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IN THE

SUPREME COURT

OF THE UNITED STATES

October Term, 1905.

No. 252.

THE STATE OF MONTANA ex rel CHARLES S. HAIRE,
Plaintiff in Error,

vs.

JAMES H. RICE, AS STATE TREASURER,
Defendant in Error.

BRIEF OF PLAINTIFF IN ERROR.

M. S. GUNN,
Attorney for Plaintiff in Error.

IN THE

SUPREME COURT

OF THE UNITED STATES

October Term, 1905.

No. 693.

THE STATE OF MONTANA ex rel CHARLES S. HAIRE,

Plaintiff in Error,

vs.

JAMES H. RICE, AS STATE TREASURER,

Defendant in Error.

STATEMENT OF CASE.

Section 17 of an act of congress entitled "An Act to provide for the division of Dakota into two states and to enable the people of North Dakota, South Dakota, Montana and Washington to form constitutions and state governments and to be admitted into the Union on an equal footing with the original states, and to make donations of public lands to such states," approved Feb. 22, 1889, known

as the "Enabling Act," and hereinafter referred to as such, reads as follows:

> "That in lieu of the grant of land for purposes of internal improvement made to new states by the eighth section of the act of September 4, 1841, which act is hereby repealed as to the states provided for by this act, and in lieu of any claim or demand by the said states, or either of them, under the act of September 28, 1850, and section 2479 of the revised statutes, making a grant of swamp and overflowed lands to certain states, which grant it is hereby declared is not extended to the states provided for in this act, and in lieu of any grant of saline lands to said states, the following grants of land are hereby made, to-wit: * * *
>
> "To the state of Montana: For the establishment and maintenance of a school of mines, one hundred thousand acres; for state normal schools, one hundred thousand acres; for agricultural colleges, in addition to the grant hereinbefore made for that purpose, fifty thousand acres; for the establishment of a state reform school, fifty thousand acres; for the establishment of a deaf and dumb asylum, fifty thousand acres; for public buildings at the capital of the state, in addition to the grant hereinbefore made for that purpose, one hundred and fifty thousand acres. * * *
>
> "That the states provided for in this act shall not be entitled to any further or other grants of land for any purpose than as expressly provided in this act. And the lands granted by this section shall be held, appropriated, and disposed of, exclusively for the purposes herein mentioned, in such manner as the legislatures of the respective states may severally provide."

The constitutional convention which formed the Con-

stitution for Montana adopted an ordinance designated as "Ordinance No. 1," entitled "Federal Relations," in which it was ordained that:

> "The state hereby accepts the several grants of land from the United States to the state of Montana, mentioned in an Act of Congress, entitled 'An Act to provide for the division of Dakota into two states and to enable the people of North Dakota, South Dakota, Montana and Washington to form constitutions and state governments and to be admitted into the Union on an equal footing with the original states, and to make donations of public lands to such states,' approved Feb. 22, 1889, upon the terms and conditions therein provided."

The ninth legislative assembly of Montana passed an act entitled "An Act to enable the normal school land grant to be further utilized in providing additional buildings and equipment for the Montana state normal college," approved Feb. 2, 1905. A copy of this act is appended hereto at pp. 40 to 45. Pursuant to the authority and the directions of said act the state board of land commissioners issued coupon bonds to the amount of $75,000. A copy of one of said bonds is contained in the record at pp. 4 and 5. The bonds were sold to the state, payment being made therefor out of the common school fund. In Section 7 of said act it is provided:

> "The moneys derived from the sale of said bonds shall be used to erect, furnish and equip an addition to the present state normal school building, at Dillon, Montana."

Plaintiff in error performed services in connection with the erection of an addition to the state normal school

building at Dillon, Montana, in the capacity of an architect and as superintendent of construction of said addition, of the reasonable value of $1,200. He presented a claim for $1,200, the value of such services, which was regularly approved and ordered paid by the state board of examiners, whereupon a warrant was issued to him for the amount thereof by the state auditor. This warrant was presented to the defendant in error for payment, and payment was refused.

Plaintiff in error applied to the supreme court of the state for a writ of mandate requiring defendant in error to pay said warrant out of the fund created by the sale of said bonds (Record, pp. 1-5). An alternative writ of mandate was issued. The defendant in error interposed a demurrer to the petition for the writ and a motion to quash the alternative writ (Record, pp. 7 and 8). The motion to quash was sustained (Record, pp. 8 and 9). The opinion of the court appears in the record on pp. 9-17. A petition for rehearing was filed (Record, pp. 18-27). The court, after making certain corrections in its opinion, denied a rehearing (Record, pp. 27 and 28). The corrected opinion is found in the record at pp. 28-35.

Section 12 of Article XI of the Constitution of Montana provides:

> "The funds of the state university and of all other state institutions of learning, from whatever source accruing, shall forever remain inviolate and sacred to the purpose for which they were dedicated. The various funds shall be respectively invested under such regulations as may be prescribed by law, and shall be guaranteed by the state against loss or diversion. The interest of said invested funds, together with the rents from leased lands or properties shall

be devoted to the maintenance and perpetuation of these respective institutions."

The court in its opinion, referring to said section 12 of article XI of the Constitution, said:

"The provisions of this section of the Constitution are mandatory and prohibitory. (Sec. 27, Art. III.) *The funds* referred to mean *all* funds. They shall be invested *to draw interest* and used for no other purpose. The interest from such invested funds, and the rents from lands belonging to this grant which have not been sold—and not the principal sum derived from the sale of such lands or from the sale of timber—shall be used for the maintenance and perpetuation of the normal school, and for no other purpose.

"If, then, the principal sum received from the sale of lands belonging to the normal school grant must be invested to draw interest, that principal sum can not be used to pay off the principal of or interest on the bonds authorized by the Act of February 2, 1905, as provided by such Act.

"It is apparent from the most casual reading of Sec. 12 of Art. XI of the Constitution, and Sec. 5 of the Act of February 2, 1905, above, that as soon as the treasurer receives any moneys from the sale of normal school lands or timber therefrom into 'the state normal school fund,' such moneys shall be invested to draw interest, under such regulations as may be prescribed by law, and that only the interest on such invested funds, together with the rents from leased lands, can be devoted to the maintenance and perpetuation of the normal school. If this section of the Constitution is to be given force and effect, it is apparent that the Act in diverting the moneys received from the sale of normal school lands, or the sale of timber therefrom, to the payment of these bonds is in direct violation of the provisions of this section of the Constitution."

It was further held by such court that section 17 of the Enabling Act is not in conflict with section 12 of article XI of the Constitution. In the opinion it is said:

> "The question now arises: Does Sec. 12 of Art. XI of the Constitution contravene the provisions of Sec. 17 of the Enabling Act? Is there any conflict between the provisions of the Enabling Act, which grants to the state legislature authority to prescribe the manner in which these normal school lands shall be held, appropriated and disposed of,—and the provisions of Sec. 12 of Art. XI of the Constitution, which provides that the funds of the state normal school shall be invested and only the interest from the invested funds, together with the rent from leased lands, may be used for the maintenance and perpetuation of the state normal school? We are of the opinion that there is no conflict whatever. Under the provisions of Sec. 17 of the Enabling Act the legislature has to do only with the *manner* of the management and disposition of the *lands* themselves, and can not control the funds derived from sales or leases except in conformity with the constitutional provisions of Sec. 12 of Art. XI above."

The court, in concluding its opinion, said:

> "The Act of the legislature now under consideration in authorizing the expenditure of moneys received from the sale of normal school lands, or of the timber on lands granted in aid of the state normal school, for the payment of these bonds or the interest accruing thereon, is in direct violation of the provisions of Sec. 12, Art. XI, of the state Constitution, and is therefore void and of no effect; and, being so, the state treasurer rightly refused to proceed under it and can not be coerced by mandamus."

It is contended in behalf of plaintiff in error that sec-

tion 17 of the Enabling Act contains a grant to the state of Montana of 100,000 acres for the *establishment,* as well as the maintenance, of state normal schools; and that authority is conferred by said section upon the legislative assembly of Montana to dispose of the lands thus granted and appropriate the proceeds to the *establishment* and maintenance of such schools.

It is further contended in behalf of plaintiff in error that when the grant contained in section 17 of the Enabling Act was accepted by the constitutional convention a contract resulted, and that section 12 of article XI of the Constitution of the state, as construed by the supreme court, impairs the obligation of such contract.

The questions for consideration by this court are:

1. Does the Enabling Act authorize the legislative assembly of the state of Montana to appropriate the proceeds derived from the sale and leasing of the lands granted to said state by section 17 of said Act for state normal schools and from the sale of the timber thereon, to the establishment of such schools?

2. If section 17 of the Enabling Act authorizes the legislative assembly of the state to appropriate the proceeds derived from the said lands to the establishment of state normal schools, does said section 17, or section 12 of article XI of the Constitution, as construed by the supreme court of the state, control?

3. Did the acceptance of the grant contained in section 17 of the Enabling Act constitute a contract?

4. If the acceptance of such grant created a contract

does section 12 of article XI of the Constitution of the state impair the obligation of such contract?

SPECIFICATION OF ERRORS.

I.

The supreme court of the state erred in holding that the Act of Congress approved Feb. 22, 1889, providing, among other things, for the admission of Montana into the union, does not authorize the legislative assembly of the state of Montana to appropriate or apply the proceeds derived from the sale or leasing of the lands granted to said state by section 17 of said Act for state normal schools, or from the sale of the timber thereon, to the establishment of such schools.

II.

The court erred in holding that section 12 of article XI of the Constitution of the state, as construed by said court, is not repugnant to section 17 of said Act of Congress.

III.

The court erred in holding that section 12 of article XI of the Constitution of the state of Montana, as construed by said court, does not impair the obligation of the contract resulting from the acceptance of the grant of lands made to the state of Montana by section 17 of said Act of Congress.

IV.

The court erred in deciding that the Act of the legis-

lative assembly of the state of Montana, entitled "An Act to enable the normal school land grant to be further utilized in providing additional buildings and equipment for the state normal school college," approved Feb. 2, 1905, is invalid, as being in conflict with section 12 of article XI of the Constitution of the state of Montana.

V.

The court erred in denying the application of plaintiff in error for a writ of mandate.

BRIEF AND ARGUMENT.

Did the Supreme Court of the state correctly construe the Enabling Act?

The supreme court of the state first construes section 12 of article XI of the Constitution, and then holds that section 17 of the Enabling Act does not conflict therewith. By the construction placed upon the section of the Constitution referred to the proceeds derived from the sale of the lands granted for state normal schools can not be used for any purpose except that of investment, and the interest received from the investment of such proceeds, together with the rents from the lands thus granted and remaining unsold can be used for the maintenance and perpetuation of the normal schools, and for no other purpose.

Section 17 of the Enabling Act contains the following grant of lands to the state of Montana:

"For the *establishment* and maintenance of a school

of mines, 100,000 acres; for state normal schools, 100,000 acres; for agricultural colleges, in addition to the grant hereinbefore made for that purpose, 50,000 acres; for the establishment of a state reform school, 50,000 acres; for the establishment of a deaf and dumb asylum, 50,000 acres; for public buildings at the capital of the state, in addition to the grant hereinbefore made for that purpose, 150,000 acres."

The section further provides that

> "* * * *The lands granted by this section shall be held, appropriated, and disposed of exclusively for the purposes herein mentioned, in such manner as the legislatures of the respective states may severally provide."*

The provision that the lands granted by the section shall be held, appropriated and disposed of exclusively for the purposes therein mentioned is not limited to the grant for a state normal school, or to the grants made for the other educational institutions, but applies generally to all of the lands granted by the section.

If, then, it was the inteniion of congress that the grant to the state normal school "should constitute an endowment for the maintenance and perpetuation of such school," as stated by the court in its opinion, it certainly follows that congress also intended that the grant for public buildings at the capital of the state should constitute an endowment for the maintenance and perpetuation of such buildings. This must be so, or the language used in expressing the intention has one meaning as applied to the grant for a normal school, and another meaning as applied to the grant for buildings at the capital.

Section 12 of the Enabling Act contains a grant to each

of the states of fifty sections of land "for the purpose of erecting public buildings at the capitals of the states, for legislative, executive and judicial purposes." The grant contained in section 17 for public buildings at the capital of the state is declared to be "in addition to the grant hereinbefore made for that purpose." The purpose of the grant contained in section 12 is to erect buildings, and it necessarily follows that the purpose referred to in section 17 is the same purpose. When, therefore, we consider the grant for the erection of public buildings at the capital of the state, it is impossible to find the intent that the lands granted should constitute an endowment for the maintenance and perpetuation of such buildings.

The supreme court of the state, in the case of State v. Cook, 17 Mont. 529, through Mr. Justice Hunt, said:

> "When congress made a grant of land to the state for public buildings at the capital of the state, by act of congress, approved Feb. 22, 1889, providing for the admission of the state into the union, it was enacted that the lands so granted should be held, appropriated and disposed of exclusively for the purposes mentioned in the act, in such manner as the legislature of the state might provide. The state, by Ordinance No. 1, Sec. 7, has accepted these lands for the purposes specified, and by legislation has provided for the erection of a capitol, exclusively out of the moneys from the fund to be created by the disposition of the lands so granted by congress. The state is an agent to carry out the objects of the donation. The fund created by the statute is a trust fund established by law in pursuance of the act of congress. * * * The state officers have no control over it, except to carry out the trust relation; and the treasurer is merely an agent for receiving and disbursing the fund under the act of congress, and in manner provided by the law of the

state. So, too, the auditor is but one of the agents or sub-agents designated by the law of the state in the execution of the trust. All this seems very clear to us in the law."

Here we have a decision by the supreme court of the state that congress intended that the proceeds of the lands granted for public buildings at the capital should be used for the purpose of erecting such buildings.

The school of mines is, beyond controversy, an educational institution. When section 17 is considered solely with reference to the grant for the establishment and maintenance of a school of mines, it would read: "There is granted to the state of Montana for the establishment and maintenance of a school of mines 100,000 acres," and the land so granted "shall be held, appropriated and disposed of exclusively" for the purpose of the establishment and maintenance of such school of mines in such manner as the legislature of said state may provide. Notwithstanding this plain and unmistakable language, the supreme court of the state holds that, by virtue of section 12 of article XI of the Constitution, the proceeds received from the sale of the lands granted for the different educational institutions can not be used for any purpose except that of investment, and the interest obtained from the investment of such proceeds, together with the rents from the lands not sold, can be used only to maintain and perpetuate such institutions, and that there is no conflict between the Constitution of the state and the Enabling Act. Such court, by so holding, has failed to give any force or effect whatever to the word "establish," used in defining the purpose of congress in making the grant mentioned.

By section 17 lands are granted to the state "for the

establishment and maintenance of a school of mines * * * ; for the state normal schools * * * ; for agricultural colleges." The sentence containing the grants for the different educational institutions referred to is an elliptical sentence. It is clearly to be inferred that the grant for a state normal school is for the *establishment* and maintenance of such institution. The rules of grammar will not admit of any other construction of the language used. Grants are also made "for the establishment of a state reform school," and "for the establishment of a deaf and dumb asylum." The school of mines, the normal school and the agricultural college are educational institutions, the reform school is a reformatory institution, and the deaf and dumb asylum is a charitable institution. We find that in section 17 reference is made to educational, charitable, penal and reformatory institutions. It is evident that congress intended to provide for both the establishment and maintenance of the educational institutions, and intended to provide for only the establishment of the other institutions. The provision for both the establishment and maintenance of the educational institutions is in keeping with the general policy of the federal government to promote education. On the other hand, there is no reason why the charitable, penal and reformatory institutions should not be maintained at the expense of the state. The intention of congress to make provision for both the establishment and maintenance of the educational institutions and to provide for only the establishment of a reform school and a deaf and dumb asylum, is evidenced by the quantity of land granted for these respective institutions. One hundred thousand acres is granted for a normal school, and only fifty thousand acres for the reform school. It was evidently contem-

plated that one hundred thousand acres would be sufficient to provide for the establishment and maintenance of a normal school. The same is true with reference to the school of mines and the agricultural college.

No reason whatever can be assigned why congress should have granted one hundred thousand acres for the *establishment* and *maintenance* of a school of mines, and the same amount of land for the *maintenance* and *perpetuation* of a normal school. On the contrary, the same reason which impelled congress to provide for the establishment of a school of mines, demanded a provision for the establishment of a normal school.

In the Constitution of the United States, as well as in the legislation by congress, the word "establish" is often used, and has uniformly been used in the sense which we claim for it. The Constitution of the United States authorizes congress to "establish post offices and post roads." It is pursuant to this power that the post office building in Helena, and all other post office buildings throughout the United States, were constructed. Pursuant to the same power congress has constructed railways, turnpikes and other roads. In the act of Feb. 18, 1881, which was amended by section 14 of the Enabling Act, it was provided that:

> "No part of such fund shall be expended for university buildings, or the salary of professors or teachers, until the same shall amount to $50,000, and then only shall the interest on said funds be used for either of the foregoing purposes, until the said fund shall amount to $100,000 when any excess, and the interest thereof, may be used for the proper establishment and support respectively of said universities."

This provision clearly authorizes the use of the excess

over $100,000 for the erection of buildings, and instead of saying that such excess may be used for the erection of buildings, it is said that the same may be used for the "establishment" of universities.

Mr. Story, in his work on the Constitution, in section 1139, says:

> "But, passing by considerations of this nature, why does not the power to establish post offices and post roads include the power to make and construct them, when wanted, as well as the power to establish a navy hospital, or a custom house, a power to make and construct them? The latter is not doubted by any persons; why, then, is the former? In each case, the sense of the ruling term 'establish' would seem to be the same; in each, the power may be carried into effect by means short of constructing or purchasing the things authorized. A temporary use of a suitable site or buildings may possibly be obtained, with or without hire. Besides, why not congress purchase or erect a post office building, and buy the necessary land, if it be, in their judgment, advisable? Can there be a just doubt that a power to establish post offices includes this power, just as much as a power to establish custom houses would be to build the latter? Would it not be a strange construction to say, that the abstract office might be created, but not the officina, or place, where it could be exercised? There are many places peculiarly fit for local post offices, where no suitable building might be found. And, if a power to construct post office buildings exists, where is the restraint upon constructing roads?"

Section 17 provides that "the lands granted by *this section* shall be held, appropriated and disposed of exclusively for the purposes herein mentioned." One of the purposes is to establish certain institutions. Section 17, as

construed by the supreme court, is nugatory to the extent that the section provides for the establishment of educational institutions.

The supreme court of the state, by virtue of the construction it places upon section 12 of article XI of the Constitution, and in holding that there is no conflict between said section of the Constitution and section 17 of the Enabling Act, necessarily decided that it was the intention of congress in making grants for the different educational institutions that the lands granted should be sold and that the proceeds should be placed in permanent funds, and used for no purpose except that of investment.

By section 11 of the Enabling Act provision is made for the creation of a "permanent school fund." By section 13 provision is made for the creation of a "permanent fund," consisting of five per cent of the proceeds of the sale of the public lands within the states. By section 14 provision is made for the creation of a "permanent fund" arising from the sale of lands granted by that section. By section 16, when taken in connection with the act of congress of July 2, 1862, therein referred to, provision is made for the creation of a "perpetual fund" by the sale of the lands granted by that section. In section 17 nothing whatever is said with reference to the creation of any fund, but the lands themselves are appropriated for the purposes stated. The grant in section 17 is made in lieu of the grant for internal improvement and the grants of swamp lands and saline lands, and is made in the same terms as the original grants, so far as any limitation upon the right to use the proceeds is concerned. In view of the fact that congress, by the same act, had provided for the creation of funds, the interest only of which could be used, if it was the intent that the proceeds of the lands granted by sec-

tion 17 should also constitute permanent funds, it is reasonable to suppose that congress would have so provided.

It is manifest that it was the intention of congress to grant the lands mentioned in sections 10 and 14 and the acts referred to in section 16, for the purpose of creating the funds therein provided for. It is also clear that by the grant contained in section 17 it was intended that the lands themselves should be "appropriated" for the purposes therein specified, instead of being used to establish funds, the interest and income only of which should be applied to such purposes.

Webster defines the word "appropriate" as follows:

> "To set apart for, or assign to, a particular person or use, in exclusion of all others; as a spot of ground is appropriated for a garden; to appropriate money for the increase of the navy."

The intent of congress with reference to the lands granted by section 17 is clearly manifest, when the act of July 2, 1862, donating lands to the state for colleges for the benefit of agriculture and the mechanic arts, referred to in section 16 of the Enabling Act, is considered. By the act of 1862 it was provided that the proceeds arising from the sale of the lands granted should constitute a perpetual fund, the principal of which should remain forever undiminished, and the interest of which should be inviolably appropriated by each state to the endowment, support and maintenance of at least one college. If congress had intended that the grant of fifty thousand acres of land to each state for an agricultural college by section 17 should stand on the same basis as the grant made by

section 16, it certainly would not have included any grant for an agricultural college in section 17, and made the same provision with reference thereto that it did with reference to lands granted for public buildings at the capitals of the states. The only reasonable explanation of the two grants for agricultural colleges is that the one contained in section 17 was for the purpose of establishing an agricultural college, and that section 17 intends and contemplates the use of the proceeds received from the sale of lands.

When it was declared that the lands should be appropriated, it certainly was not meant that the rent derived from leasing the lands, and the interest received from an investment of the proceeds of the lands sold should be appropriated. The lands are granted to the state, and the same lands are required to be appropriated for certain purposes. No one could be found who would say that congress did not intend to grant the lands, but only the rent which might be derived from leasing the lands and the interest which might be obtained from the investment of the proceeds of the lands sold. It would seem to me that there is as much reason for saying that the lands were not granted as there is for saying that congress did not intend that the lands should be appropriated. In section 20 we find the word "appropriated" is used. In that section it is provided "that the sum of $20,000, or so much thereof as may be necessary, is hereby appropriated * * * for defraying the expenses" of the constitutional convention. Here the meaning of the word "appropriated," as used in the Enabling Act, is clearly shown.

In the opinion of the supreme court of the state it is said:

"Under the provisions of section 17 of the Enabling Act the legislature has to do only with the *manner* of the management and disposition of the *lands* themselves, and can not control the funds derived from sales or leases except in conformity with the constitutional provisions of section 12 of article XI, above."

Notwithstanding section 17 declares that the lands shall be *appropriated* for the purposes for which the grants are made, the state court says that the legislature has to do only with the "management and disposition of the lands themselves," and the right to control the funds received from sales and leases can not be exercised except in conformity with the Constitution. It follows that no significance whatever is attached to the language of the Enabling Act conferring power upon the legislature to appropriate the lands.

* * * * *

Section 11 of the Enabling Act reads as follows:

"That all lands herein granted for educational purposes shall be disposed of only at public sale, and at a price not less than ten dollars per acre, the proceeds to constitute a permanent school fund, the interest of which only shall be expended in support of said schools. But said lands may, under such regulations as the legislatures shall prescribe, be leased for periods of not more than five ears, in quantities not exceeding one section to any one person or company; anl such lands shall not be subject to pre-emption, homestead entry or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only."

It was contended in behalf of the defendant in error in the lower court that the expression "all lands herein granted for educational purposes" contained in section 11, includes the lands mentioned in section 17. The supreme court of the state held otherwise.

As this court is now called upon to construe section 17, the question as to the lands referred to in section 11 is open for consideration, notwithstanding the decision of the supreme court of the state with reference thereto.

In discussing this question attention is first directed to the following provision of section 11:

> "* * * *and such lands shall not be subject to pre-emption, homestead entry or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only."*

The words "such lands" necessarily refer to the lands mentioned in the first line of the section.

Section 10 of the Enabling Act reads as follows:

> "That upon the admission of each of said states into the union sections numbered sixteen and thirty-six in every township of said proposed states, and where such section, or any parts thereof, have been sold or otherwise disposed of by or under the authority of any act of congress, other lands equivalent thereto, in legal subdivisions of not less than one-quarter section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said states *for the support of common schools*, such indemnity lands to be selected within said states in such manner as the legislature may provide, with the approval of the secretary of the interior; *Provided*, that the sixteenth and thirty-sixth sections embraced in

permanent reservations for national purposes shall not, at any time, be subject to the grants nor to the indemnity provisions of this act, nor shall any lands embraced in Indian, military or other reservations of any character be subject to the grants or to the indemnity provisions of this act until the reservation shall have been extinguished and such lands be restored to, and become a part of, the public domain."

The grant contained in section 10 is a grant *in praesenti*. When the states were admitted into the union the title to sections 16 and 36 passed, whether the same were surveyed or unsurveyed.

Schulenburg v. Harriman, 21 Wall. 44.
Beecher v. Weatherby, 95 U. S. 517.
Sherman v. Buck, 45 Cal. 656.
Daggett v. Bonewitz, 7 N. E. 900.

Section 19 of the Enabling Act provides:

"That all lands granted in quantity or as indemnity by this act shall be selected, under the direction of the secretary of the interior, from the surveyed, unreserved, and unappropriated public lands of the United States within the limits of the respective states entitled thereto."

Section 17 contains a grant of lands "in quantity," and by virtue of the provisions of section 19, the title to such lands could not pass until after there had been a selection, and such selection could not be made until after the lands had been surveyed, and could then be made from such lands only as had not been reserved or appropriated.

Mc[illegible]e v. Donahue, 142 U. S. 587.
Pa[illegible]rson v. Tatum, Fed. Cas. No. 10830.
Te[illegible] v. Megerle, 24 Cal. 619.

We hav[illegible] then, a grant by section 19 of specific lands, the title t[illegible] which passed to the states upon their admission into the u[illegible]on, whether such lands at that time were surveyed or [illegible]surveyed. On the other hand, section 17 did not grant [illegible]the title to any particular lands, but merely vested th[illegible]right to a specific quantity to be afterwards selected.

In viev[illegible] of these considerations, we are irresistably forced to [illegible]he conclusion that the lands referred to in section 11 a[illegible] the specific lands granted by section 10. Any other con[illegible]truction would lead to absurd results. As the lands gra[illegible]ted in section 17 are granted in quantity, there could be [illegible]o reservation of these lands except by reserving all of the [illegible]public lands in the states mentioned in the act. Congress [illegible]ould not have intended such a reservation. This is shown [illegible]ot only by section 19, but by section 4, wherein it is mad[illegible] a condition to the admission of the states that they shou[illegible]d disclaim all rights and title to the unappropriated pub[illegible]c lands.

In the [illegible]case of Foley v. Harrison, 15 How. 444, a construction [illegible]of the act approved Sept. 4, 1841, granting lands for inter[illegible]al improvement, was involved. The court in the opin[illegible]n said:

> "[illegible]t could not have been the intention of the government to relinquish the exercise of power over the public lands that might be located by the state. The same system was to be observed in the entry of lands by the state as by individuals, except the payment of

the money; and this was necessary to give effect to the act, and to prevent conflicting entries."

The only construction of section 11 that is reasonable and in harmony with section 19, is that the lands referred to therein are the lands granted by section 10. Section 11 necessarily relates to a specific grant, whereas section 19 expressly declares that the lands therein referred to are the lands granted "in quantity" and "as indemnity."

In section 17 congress granted to South Dakota "for such other educational and charitable purposes as the legislature of said state may determine, 170,000 acres," and made a like grant for the same purposes to North Dakota. To Washington congress, by that section, granted "for state charitable, educational, penal and reformatory institutions 200,000 acres." The section then provided that the lands should be held, appropriated and disposed of for the purposes mentioned, in such manner as the legislatures of the respective states might severally provide. According to the terms of the section the legislature of each of said states may divide or apportion these lands among the several institutions for the various purposes named, as it chooses. If section 11 applies to the lands granted by section 17, we then have a reservation in section 11 which not only applies to the lands granted for the particular institutions named, but we also have a reservation which will operate upon lands granted for charitable, educational, penal and reformatory purposes. This grant to North Dakota, South Dakota and Washington, to which we have called attention, shows clearly that the reservation contained in section 11, and, in fact, the entire section, never was intended to apply to any lands granted by section 17.

To give section 11 the application contended for by the

attorney general would be, in effect, to repeal and abolish the homestead laws in at least seven states of this northwest country.

The grant contained in section 17 is for the purpose of *establishing*, as well as *maintaining*, the different institutions of learning therein mentioned. It is expressly declared that the "lands granted by *this section* shall be held, appropriated and disposed of exclusively for the purposes herein mentioned." The proceeds of the lands referred to in section 11 must be placed in a fund, the interest of which is required to be expended "in support of *said* schools." It may be that the word "support" is synonymus with "maintain," but no one would contend that it has the same meaning as the word "establish."

If section 11 prohibits the use of the proceeds of the lands granted by section 17, and only permits the expenditure of the interest and income of such proceeds the provision of section 17 that the lands granted by that section shall be held, appropriated and disposed of exclusively for the purposes therein mentioned, is nugatory.

The grant made by section 10 is "for the support of common schools." Section 11 requires that the interest of the permanent fund therein provided for "shall be expended in the support of said schools." The only schools to which the word "said" can refer are the common schools mentioned in section 10. As it could not have been intended by congress that the interest on the proceeds of the lands granted by section 17 should be used for the support of the "common schools," the lands mentioned in section 11 must necessarily be the lands granted by section 10. In section 11 the price at which the lands therein referred to may be sold is fixed at not less than ten dollars per acre, and it is provided that "said lands may, under such regulations as

the legislature shall prescribe, be leased for periods of not more than five years in quantities not exceeding one section to any one person or company." In section 14 it is provided:

> "None of the lands granted in this section shall be sold at less than ten dollars per acre; but said lands may be leased in the same manner as provided in section 11 of this act."

If section 11 applied to all lands granted by the act, then there was no necessity whatever for the provision quoted from section 14. In section 14 it is provided that the proceeds derived from the sale of the lands therein granted "shall constitute a permanent fund * * * and the income thereof to be used exclusively for university purposes." If section 11 is to receive the construction contended for by defendant in error, then the provision just quoted from section 14 is superfluous. In section 14 reference is made to "schools, colleges and universities," and the expression "university purposes" is used. It thus appears that the words "colleges" and "universities" are used as distinguishing terms, and that the word "schools," used in section 11, was not intended to embrace colleges and universities.

It is apparent that the framers of the Constitution understood the words "school fund," as used in section 11, to apply to the grant by section 10, for the support of common schools. In sections 2, 3 and 5 of article XI of the Constitution, the words "school fund" are used, whereas in section 11 of the same article reference is made to "the funds of the state university," clearly showing that the framers of the Constitution regarded the state university fund as different and distinct from the school fund.

It is a significant fact that authority is granted by section 17 to legislatures of the several states, to which the Enabling Act applies, to hold, appropriate and dispose of the lands by such section granted in such manner as the legislatures may prescribe, whereas, by section 11 it is provided that the sale must be at public sale, the price must not be less than ten dollars per acre, and in the event the lands be leased they shall not be leased for a term longer than five years and in quantities not exceeding one section to one person or company. If section 11 refers to the lands mentioned in section 17, then the provision conferring discretion upon the legislatures as to the manner of holding, appropriating and disposing of such lands is meaningless.

It is a rule of construction of statutes that a specific intent will control as against a general intent. In view of this rule, even though section 11 was intended to apply to all lands granted by the act, it can not control the specific intent declared in section 17, that the purposes of the grant made by that section are to establish and maintain state normal schools and other institutions, and that the lands granted shall be held, appropriated and disposed of exclusively for such purposes, in such manner as the legislature may provide. Furthermore, where there is an irreconcilable conflict between different parts of the same act, the last in order of position must control.

As already stated, the only reasonable explanation of the two grants for agricultural colleges, the one contained in section 16, and the other contained in section 17, is that the grant contained in section 17 was for the purpose of establishing and maintaining an agricultural college, and congress, in making such grant, intended and contemplated that the proceeds derived from the sale of the lands granted should be used for such purpose; whereas, the grant con-

tained in section 16 was for the purpose of establishing a perpetual fund, the capital of which should remain forever undiminished, and the interest of which should be applied to the use and support of such college.

When section 11 is read and considered in connection with the other provisions of the act, it is manifest that the word "herein," appearing in the first line of the section, was erroneously used. The proper word would have been "hereinbefore," or the word "therein." It may be that the original draft of the bill incorporated sections 10 and 11 as one section, and afterwards the act was differently sectionized without changing the language used to conform thereto.

Again, if it was intended that section 11 should embrace all lands granted by the act, the more appropriate place for such section in the act was after the sections containing the different grants. The fact that it immediately follows section 10 is significant.

Thus far we have proceeded upon the assumption that section 17 contains a grant of lands. Notwithstanding the language of the section, it is not a grant of lands, but is merely a grant of a right to select lands and thereafter acquire the title thereto. As said by Circuit Justice Field in the case of Patterson v. Tatum, Fed. Cas. No. 10830, in speaking of the grant for internal improvement by the act of 1841, "it only vests an immediate right to a specific quantity to be afterwards selected under direction of the state." By virtue of the provisions of section 19 the right to make the selection only applies to surveyed public lands, and then only to such surveyed public lands as are not at the time of the selection reserved or otherwise appropriated. On the other hand, section 10 contains a grant of the lands, and is the only section of the act in which the

title to lands is granted, as distinguished from a right afterwards to select lands and obtain title thereto. When, therefore, the expression "all lands herein granted" was used in section 11, congress may have had in view the distinction pointed out.

In considering section 17 independently of section 11 it clearly appears that it was the intention of congress to provide for the establishment, as well as the maintenance, of the educational institutions referred to in such section, by authorizing the legislature to appropriate the lands granted, or the proceeds thereof, to such purpose, instead of creating funds, the interest and income of which should be used to maintain and perpetuate such institutions. The intent so clearly expressed in section 17 absolutely forbids any construction of the Enabling Act which would include the lands granted by section 17, within the class of lands referred to in section 11.

The fundamental rule in construing statutes is to ascertain the intention of the law-making power and to give effect to such intent, even though it does not conform to the letter of the statute.

In the case of Church of the Holy Trinity v. United States, 143, U. S. 457, the court said:

> "It is a familiar rule that a thing may be within the the letter of the statute and yet not within the statute, because not within its spirit, nor within the intention of its makers. This has been often asserted, and the reports are full of cases illustrating its application. This is not the substitution of the will of the judge for that of the legislator, for frequently words of a general meaning are used in a statute, words broad enough to include an act in question, and yet a con-

sideration of the whole legislation, or of the circumstances surrounding its enactment, or of the absurd results which follow from giving such broad meaning to the words, makes it unreasonable to believe that the legislator intended to include the particular act."

In the case of Heydenfeldt v. Daney Mining Co., 93 U. S. 634, in which the court, construed the 7th section of the Nevada Enabling Act, granting sections 16 and 36 for common school purposes, it is said:

> "It is true that there are words of present grant in this law; but in construing it, we are not to look at any single phrase in it; but to its whole scope, in order to arrive at the intention of the makers of it. 'It is better always,' says Judge Sharswood, 'to adhere to a plain common-sense interpretation of the words of a statute, than to apply to them refined and technical rules of grammatical construction.' Gyger's Estate, 65 Pa. St. 312. *If a literal interpretation of any part of it would operate unjustly, or lead to absurd results, or be contrary to the evident meaning of the act taken as a whole, it should be rejected. There is no better way of discovering its true meaning, when expressions in it are rendered ambiguous by their connection with other clauses, than by considering the necessity for it, and the causes which induced its enactment.* With these rules as our guide, it is not difficult, we think, to give a true construction to the law under consideration." (The italics are mine.)

In view of the rule that the intention and spirit of a law must prevail over its letter, the expression, "all lands herein granted," found in section 10, must yield to the clear intent of congress that the lands referred to were only the lands granted by section 10.

The cases of State v. Maynard, 71 Pac. 775, State v.

McMillan, 96 N. W. 310, and Roach v. Gooding, 81 Pac. 642, were cited in the lower court as supporting the position of defendant in error that section 11 applies to the lands granted by section 17. Each of these cases holds that the expression, "all lands herein granted for educational purposes," appearing in the first line of section 11 of the Enabling Act, applies to all lands granted by the act. The first of these cases decided was that of State v. Maynard. This case involved the question of the right to use the proceeds of lands granted to the state of Washington by section 17 of the Enabling Act for a state normal school, for the erection of a state normal school building. It would seem from the report of the case contained in the Pacific Reporter, that the relator was not represented by an attorney. The opinion assumes, without serious consideration, that the provisions of section 11 of the Enabling Act apply to all lands granted by the act. The next case decided was that of State v. McMillan. This case involved the question of the right to the use of the proceeds of the lands granted to the state of North Dakota for a normal school. The construction of the Enabling Act adopted by the supreme court of the state of Washington is followed, but the decision is based principally upon the provisions of the Constitution of the state referred to in the opinion. These provisions are entirely different from the provisions of section 12 of article XI of the Constitution of Montana. The last case decided was that of Roach v. Gooding. This case follows the construction of the Enabling Act adopted by the supreme court of Washington and the supreme court of North Dakota. The case involved the grant made by section 14 for university purposes.

It would seem from reading the opinions in these cases

that neither of them received the serious reflection and consideration which the importance of the question involved deserved. In the opinion in each case it is assumed that the words "all lands herein granted" were intended to refer to all lands granted by the act, and the letter of the statute is followed without any attempt to discover the spirit and intent by an analysis of the entire act. The many reasons which I assign in support of my contention are not discussed or even alluded to. I submit that these cases are entitled to little weight as authority. The supreme court of Montana held that section 11 does not apply to the lands granted by section 17.

In concluding this branch of the case I respectfully submit that, by section 17 of the Enabling Act, there was granted to the state of Montana one hundred thousand acres of land for the purpose of establishing, as well as maintaining, a state normal school, and that there was conferred upon the legislature of the state the authority to appropriate such lands to the purpose for which the grant was made. I further respectfully submit that the erection of buildings for a state normal school is the establishment of such school, within the meaning of the word "establishment" as used in the Enabling Act, and that the authority to appropriate the lands to the purpose of the grant authorized the application of the proceeds received from the sale of the lands to the erection of such buildings.

The supreme court of the state, by its decision, denied the authority of the legislature to appropriate for a state normal school the lands granted therefor. The decision thus made is based upon the provisions of section 12 of article XI of the Constitution of the state.

Does the Enabling Act or the state Constitution control?

By the Constitution of the United States there is granted to congress all the powers therein enumerated. To the extent of this grant the people have divested themselves of the attributes of sovereignty. A law is but the expression of the will of the sovereign power. It is impossible, therefore, for any law of a state, whether found in the Constitution or in a statute, to conflict with the Constitution of the United States, or any act of congress made in pursuance thereof. If a provision of a constitution or a statute of a state is inconsistent with the Constitution of the United States, or an act of congress, it is not law. The proposition thus stated is embodied in the VIth article of the Constitution of the United States, which declares:

> "This Constitution and the laws of the United States which shall be made in pursuance thereof, * * * shall be the supreme law of the land; *and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.*"

In section 3 of article IV of the Constitution of the United States it is provided:

> "The congress shall have the power to dispose of and make all needful rules and regulations respecting the territory and other property belonging to the United States."

Pursuant to this authority, the grants contained in the Enabling Act were made. These grants are laws, and if section 12 of article XI of the Constitution of Montana is

inconsistent therewith it must yield to the act of congress making said grants, which is the supreme law of the land.

When congress, by section 17 of the Enabling Act, provided that the lands granted by that section should be held, appropriated and disposed of in such manner as the legislatures of the respective states should severally provide, it created the legislatures of the several states the agents to carry out and perform the trust which was imposed upon the states by the grant made. This it had the right to do by virtue of the power conferred by the Constitution of the United States with reference to the territory and property of the United States. Congress might have designated the governor, or any other officer of the state, or any officer of the United States, as the agent to hold, appropriate and dispose of the lands granted by section 17, for the purposes therein named. If an officer of the United States had been named, for instance, the secretary of the interior, no one would be found to assert that that authority granted to him by an act of congress could be controlled by the Constitution of the state. The mere circumstance that the legislature of the state has been designated can not change the law with reference to the authority granted. By virtue of the authority thus conferred upon the legislature it was beyond the power of the people of the state, in the Constitution, to control in any manner the legislature with reference to the holding, appropriation and disposal of such lands.

The supreme court of the state in its opinion said:

"The lands were granted to the state of Montana—not to the legislative assembly. The legislature may say how the lands shall be held; but it is the state which holds them—which has title to them. It is the

> state which says what shall be done with the lands. The legislature may prescribe the manner of holding or disposing of them, but the title passes from the state, and the funds derived from sales or leases pass to the state, to be disposed of by the state as it may see fit, subject only to the condition that they shall be used exclusively for normal school purposes. The state may act through its constitutional convention, and, if it does so, such action is conclusive. In the absence of constitutional provision, it may act through its legislative assembly."

The language of the Enabling Act is that there is granted to the state of Montana "for state normal schools, one hundred thousand acres," and the lands so granted "shall be held, appropriated and disposed of exclusively" for state normal schools in such manner as the legislature of the state may provide. It is true that the grant is to the state, but, as declared in section 1 of article XVII of the Constitution, the lands "shall be held in trust for the people, to be disposed of as hereinafter provided," for the purpose for which they have been granted. The state received the title in trust for the people, who are the beneficiaries. It is not the state to which power is granted to determine the manner in which the lands shall be held, appropriated and disposed of, but such power is conferred upon the legislature of the state. There is a clear distinction between the state and the legislature of the state. In the case of Poindexter v. Greenhow, 114 U. S. 270, it is said:

> "The state is a political corporate body, can act only through its agents, and can command only by laws."

In speaking of the distinction between the government

of a state and the state itself, this court in the same case says:

> "In common speech and common apprehension they are usually regarded as identical; and as ordinarily the acts of the government are the acts of the state, because within the limits of its delegation of power, the government of the state is generally confounded with the state itself, and often the former is meant when the latter is mentioned. The state itself is an ideal person, intangible, invisible, immutable. The government is an agent, and, within the sphere of the agency, a perfect representative; but outside of that it is a lawless usurpation. The Constitution of the state is the limit of the authority of its government, and both government and state are subject to the supremacy of the Constitution of the United States and of the laws made in pursuance thereof."

It would seem that the lower court has, in its opinion, confounded the legislature of the state with the state itself. As already stated, the grant was made to the state in trust for the people, and it was declared that the trust should be executed by the legislature, not by the state. The legislature is a branch of the state government, and, as said in the opinion in the case of Poindexter v. Greenhow, supra, "both government and state are subject to the supremacy of the Constitution of the United States and of the laws made in pursuance thereof." When, therefore, congress declared that the lands granted should be held, appropriated and disposed of for the purposes for which they were granted, in such manner as the legislature of the state might provide, it did not mean to confer power upon the state, but it was clearly the intention to grant the power to the legislature, as distinguished from the state.

By no rule of statutory construction can the word "legislature" be said to mean "state."

I therefore submit that the Enabling Act controls.

Did the acceptance of the grant contained in section 17 of the Enabling Act create a contract, and does section 12 of article XI of the Constitution, as construed by the supreme court of the state, impair the obligation of such contract?

The 7th section of Ordinance No. 1, adopted by the constitutional convention of Montana, provides:

> "The state hereby accepts the several grants of land from the United States to the state of Montana, mentioned in an act of congress, entitled 'An Act to provide for the division of Dakota into two states, and to enable the people of North Dakota, South Dakota, Montana and Washington, to form constitutions and state governments, and to be admitted into the union on an equal footing with the original states, and to make donations of public lands to such states.' Approved February 22d, 1889, *upon the terms and conditions therein provided.*"

In the case of McGehee v. Mathis, 4 Wall. 143, the court said:

> "It is not doubted that the grant by the United States to the state upon conditions, and the acceptance of the grant by the state, constituted a contract. All of the elements of a contract met in the transaction—competent parties, proper subject matter, sufficient consideration, and consent of minds. This contract was binding upon the state, and could not be violated

by its legislation without infringement of the Constitution.

> "The contract required the state to appropriate the lands granted, to the purpose of reclaiming them. The lands themselves might be conveyed to the levee contractors for the work performed, or the contractors might be paid in money or in scrip representing land. If the state, therefore, after acceptance of the grant, and without applying the lands or their proceeds in money or scrip to the purpose of reclamation, had sought, by means of taxation, to compel purchasers to pay for the levees and drains necessary to reclaim their land, it would certainly be difficult to say that the contract was not violated."

In the case of Missouri, etc. Ry. Co. v. Railway Co., 97 U. S. 491, the court said:

> "It is always to be borne in mind, in construing a congressional grant, that the act by which it is made is a law as well as a conveyance, and that such effect must be given to it as will carry out the intent of congress."

Inthe case of Schulenberg v. Harriman, 21 Wall. 44, the court, in speaking of a grant of lands by the United States to the state of Wisconsin, said:

> "A legislative grant operates as a law as well as a transfer of the property, and has such force as the intent of the legislature requires."

By section 7 of Ordinance No. 1, relating to federal relations, the constitutional convention accepted the grants made by the Enabling Act "upon the terms and conditions therein provided." This acceptance created the contract.

It follows that as section 12 of article XI of the Constitution, which did not become operative until ratified at the election held on the first Tuesday of October, 1889, is inconsistent with the contract resulting from the acceptance of the grants made by section 17 of the Enabling Act, such section is a nullity by virtue of the contract clause of the Constitution of the United States.

In the case of Gunn v. Barry, 15 Wall. 10, the court said:

> "A state can no more impair an existing contract by a constitutional provision, than by a legislative act; both are within the prohibition of the national constitution."

* * * * *

It can not be seriously claimed that by the admission of Montana into the union the provisions of section 12 of article XI of the Constitution of Montana, if inconsistent with the Enabling Act, were assented to by congress, because the admission took place by virtue of a proclamation of the president in accordance with section 8 of the Enabling Act. In that section it was provided that

> "* * * if the constitutions and governments of said proposed states are republican in form, and if all the provisions of this act have been complied with in the formation thereof, it shall be the duty of the president of the United States to issue his proclamation announcing the result of the election in each, and thereupon the proposed states which have adopted constitutions and formed state governments as herein provided shall be deemed admitted by congress into the

union under and by virtue of this act on an equal footing with the original states from and after the date of said proclamation."

No authority was conferred upon the president to determine whether or not the Constitution of Montana, in any of its provisions, conflicted with the Constitution of the United States, or with any act of congress, and there was no necessity for such authority, because if there were any such provisions they could have no force or validity whatever. It can not be contended with any degree of reason that a proclamation of the president could have the effect of repealing, modifying or amending an act of congress.

Respectfully submitted.

M. S. GUNN,
Attorney for Plaintiff in Error.

APPENDIX.

An Act to enable the Normal School Land Grant to be further utilized in providing additional buildings and equipment for the Montana State Normal College.

Be it Enacted by the Legislative Assembly of the State of Montana:

Section 1.

The State Board of Land Commissioners of the State of Montana is hereby authorized and directed to issue coupon Bonds to the amount of Seventy-five Thousand (75,000) dollars. The Denomination of said bonds shall be One Thousand (1000) dollars each, and they shall be known as the State Normal Bonds of 1905. Said Bonds shall become due in Twenty years from the date of issue and be payable, at the option of the State, in ten years from their date. Said Bonds shall bear interest at a rate of not more than five per cent per annum, payable semi-annually, on the first days of May and November in each year, at the office of the State Treasurer of the State of Montana. Said Bonds shall run from the State Board of Land Commissioners of the State of Montana, to bearer, and shall be signed by the State Board of Land Commissioners, and countersigned by the Secretary of State who shall attach his seal thereto. Provided, however, that nothing in this Act shall be so construed as to hold the State of Montana liable for the payment of said Bonds or the interest thereon.

Section 2.

Each Bond issued under the provisions of this Act shall contain a condition substantially as follows:

"This Bond is one of a series of seventy-five Bonds of the denomination of One Thousand (1000) dollars each, of like tenor and date, and numbered from one to seventy-five inclusive, and aggregating the sum of Seventy-five Thousand (75,000) dollars. The right is hereby reserved to redeem this Bond at any regular interest period as stated herein, on and after three years from its date, by the payment of the principal and interest in full to date of redemption, and a premium upon the face value of the Bond of five per cent. Provided, that not less than sixty days notice shall be given by the State Treasurer of such intention to redeem by publication in not less than one newspaper published in the City of New York, and one newspaper published in the City of Helena, Montana; and provided further that such redemption shall be made by serial number, beginning with the bond bearing the lowest number then outstanding.

Section 3.

Said Bonds shall bear date of May 1st, 1905, and shall be issued and sold as soon as possible after the passage of this act.

Section 4.

All funds realized from the sale, or of the leasing of the lands, and licenses to cut trees thereon, (being One Hundred Thousand Acres) granted by the United States to the State of Montana for the establishment and main-

tenance of a State Normal School, under and by virtue of the provisions of Section 17 of the Act of Congress, approved February 22nd, 1889, entitled An Act to provide for the Division of Dakota into two states, and to enable the people of North Dakota, South Dakota, Montana and Washington to form State Governments, and to be admitted into the union on an equal footing with the original States, and to make donations of public lands to such States" except such sums as may be necessary for the payment of the bonds heretofore issued against such funds, and the interest thereon, are hereby pledged as security for the payment of the principal and interest of the Bonds issued and authorized by this Act, and all moneys and revenues received from said Lands or any of them, whether on account of sales of lands, or of leases or sales of timber therefrom, or otherwise, (excepting such moneys as may be necessary for the payment of the principal and interest on Bonds heretofore issued, as above referred to) are hereby set apart and shall continue as a separate fund for the payment of the principal and interest of the Bonds issued by reason hereof as hereinafter provided.

Section 5.

It shall be the duty of the State Treasurer to keep all moneys derived from the sale, leases or sale of timber from the State Normal School Lands, as hereinbefore mentioned, in a separate fund, to be known and designated as "The State Normal School Fund" and out of the moneys in such fund, he shall pay, after the approval of the State Board of Examiners.

1st.

All sums due as principal or interest on the Bonds heretofore issued and referred to in Section 3 of this Act.

2nd.

The cost and expenses of issuing and selling the Bonds authorized by this Act.

3rd.

The interest on the Bonds herein authorized, when due; and

4th.

When such bonds shall become due or payable, he shall call in and pay the same as rapidly as the money in such fund will admit, after providing for the interest on same. In the event that there shall not be sufficient money in the said fund to pay the interest when due, the State Board of Examiners shall, by order entered on its minutes, cause warrants to be issued on the said fund for the amount of interest then due, and the warrants so issued shall bear interest at the rate of five (5) per cent per annum; said warrants shall be paid by the State Treasurer as soon as sufficient money accumulates in said fund applicable thereto to pay the same, and by reason of the delivery of said warrants to the holders of said Bonds in satisfaction of accrued interest there shall be no default thereof.

Section 6.

It shall be the duty of the State Treasurer to give notice by advertising for not less than two insertions, in one newspaper published in the City of Helena, Montana, and

one newspaper published in the City of New York, that he will, on the first day of April, 1905, sell the Seventy-five thousand (75,000) dollars of bonds hereby authorized, and will receive bids therefor, and said bonds shall on said day be sold to the highest bidder, or to the person offering to take the same at the lowest rate of interest, as may be directed by the State Board of Land Commissioners. If no bids are then received, or if none are accepted, said Bonds may be thereafter sold at private sale: Provided, that the State Board of Land Commissioners shall receive and open all bids and accept or reject the same, as it may deem for the best interests of the State; and provided further, that said bonds shall not be sold for less than par.

Section 7.

The moneys derived from the sale of said Bonds shall be used to erect, furnish and equip an addition to the present State Normal School Building, at Dillon, Montana, and shall be paid out for such purpose by the State Treasurer upon vouchers approved by the Executive Board of the State Normal School, and allowed and ordered paid by the State Board of Examiners.

Section 8.

The erection and equipment of said building shall be under the control of said Executive Board, but all plans, specifications and contracts shall be subject to approval by the State oBard of Education before the same shall become valid and binding.

Section 9.

This Act shall be in full force and effect from and after its passage and approval by the Governor.

Approved Feb'y. 2nd, 1905.